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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,288	12/02/2003	Chiaki Matsutori		2549
<div>7590 03/21/2007 George A. Loud, Esquire BACON & THOMAS Fourth Floor 625 Slaters Lane Alexandria, VA 22314-1176</div>			<div>EXAMINER PICKETT, JOHN G</div> <div>ART UNIT 3728 PAPER NUMBER</div>	
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE		
3 MONTHS	03/21/2007	PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/725,288

Applicant(s)

MATSUTORI ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-24, 26 and 27 is/are rejected.
- 7) ☒ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>12/26/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment filed 19 December 2006. The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claim 26 (second occurrence) been renumbered claim 27.

Claims 20-27 are pending in the application. Claims 1-19 have been canceled. Claims 23-27 are new.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 103

3. Claims 20-24, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Betsuyaku (US 6,006,919).

Claim 20: The claim does not invoke 35 U.S.C. 112, sixth paragraph, because the claim provides a list of the structure underlying the means and the detailed recitation of structure for performing the function removes this element from the purview of 35 U.S.C. 112, sixth paragraph); *Cole v. Kimberly-Clark Corp.*, 102 F.3d 524, 531, 41 USPQ2d 1001, 1006 (Fed. Cir. 1996).

Betsuyaku discloses a thin plate supporting container comprising a container body **1**; a lid unit (see Figure 10 and Col. 9, lines 41-43); supporting stands **5**; and body positioning means **4** fixed on the exterior bottom of container **1** and including V-shaped groove plate pieces **9** defining V-shaped grooves (see Figure 5) in three positions and oriented in three different directions (see for example, Figure 7 or Col. 9, lines 51-56). In the embodiment of figures 4-6, Betsuyaku discloses integrally formed slots **3** on the sidewalls instead of separate slotted plates fixed on the sidewalls. However, in the embodiment of Figure 1, Betsuyaku anticipates slotted plates **3A** fixed on the sidewalls of the container (see Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the slots of the embodiment of figures 4-6 as removable slotted plates as taught by the embodiment Figure 1 in order to enable variance of the slot sizes and/or part replacement. It has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Nerwin v. Erlichman*, 168 USPO 177, 179.

Betsuyaku is capable of functioning as claimed.

Claim 21: Betsuyaku teaches the use of PBT (see Col. 11, lines 41-43), which as disclosed by the applicant at page 19, line 10 of the substitute specification, is a material having a low surface frictional resistance.

Claim 22: Betsuyaku discloses V-shaped groove plate pieces **9** as detachably mounted (see for example, Col. 11, lines 17-19).

Claim 23: Betsuyaku discloses a frame (outer portion of **9**, see Figure 6) with converging inclined plates **10/11** and defining an opening (see Figure 5). As to the

support stands **5**, in contact with the inclined plates, Betsuyaku in Figure 9 discloses such contact and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide such contact in order to obtain a tight fit.

Claim 24: Support stands **5** are parallel.

Claims 26 and 27: Betsuyaku discloses notches **16/17**.

Allowable Subject Matter

4. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

5. As allowable subject matter has been indicated, applicant's reply must either comply with all formal requirements or specifically traverse each requirement not complied with. See 37 CFR 1.111(b) and MPEP § 707.07(a).

Response to Arguments

6. Applicant's arguments filed 19 December 2006 have been fully considered but they are not persuasive. In response to applicant's argument that the positioning projection would engage the support stands as opposed to the v-shaped grooves, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably

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distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Conclusion


Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Greg Pickett
Examiner
19 March 2007


Mickey Yu
Supervisory Patent Examiner
Group 3700